



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

Mr. Ricardo R. Lopez
Rogers, Morris & Grover, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2010-13142

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 392010.

The North East Independent School District (the "district"), which you represent, received two requests for several categories of information pertaining to a former district police officer, specified complaints, and the district police department's policies and procedures. You state you will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by one of the requestors. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant requests for information because it was created after the date the district received the second request. This ruling does not address the public availability of any information that is not responsive to the requests and the district is not required to release that information in response to the requests.

Next, we understand the second requestor to argue he has a right of access to a submitted complaint pursuant to section 614.023 of the Government Code. Section 614.023 of the Government Code provides:

- (a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer

appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.

Id. § 614.023(a). Section 614.021(a)(3) provides that, except as provided by subsection (b), subchapter B of Chapter 614 applies to a peace officer under article 2.12 of the Code of Criminal Procedure or other law who is appointed or employed by a political subdivision of this state. *Id.* § 614.021(a)(3). We note the police officer of a school district falls within the scope of section 614.021(a)(3) and that subsection (b) does not apply in this instance. *Id.* § 614.021(a). The responsive information includes a signed complaint against a former district police officer that was filed with the district's police department. We note the requestors are the former district police officer and her attorney. Thus, both requestors have a right of access to the complaint, which we have marked, pursuant to section 614.023(a) of the Government Code. Although you contend the marked complaint is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 4 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, the district must release the marked complaint to both requestors pursuant to section 614.023(a) of the Government Code. However, we will address your arguments against the disclosure of the remaining responsive information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987).

We note the information you seek to withhold pertains to internal affairs investigations pertaining to the named former district police officer. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state, and provide documentation showing, the Bexar County District Attorney's Office objects to the release of the submitted information because its release would interfere with its pending criminal prosecution. Based upon your representation and our review, we conclude that the

release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.) (court delineates law enforcement interests that are present in active cases). Therefore, we agree section 552.108(a)(1) is applicable to the remaining responsive information, and the district may withhold it on that basis.

In summary, the district must release the marked complaint pursuant to section 614.023(a) of the Government Code. The district may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.¹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 392010

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your remaining argument against disclosure.